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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jason Crews,

10 Plaintiff,

11 v.

12 Rosewood Realty LLC, et al.,

13 Defendants.
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No. CV-24-00778-PHX-DLR

ORDER

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16 At issue is Plaintiff's third motion for entry of default judgment. (Doc. 25.) Plaintiff
17 alleges that he received eight phone calls from Defendants between March 5, 2024 and
18 March 15, 2024, that violated the Telephone Consumer Protection Act ("TCPA"). Plaintiff
19 contends that each of these eight calls violated two separate subsections of the TCPA. First,
20 they violated 47 U.S.C. § 227(b), which prohibits making a non-emergency call using an
21 automatic telephone dialing system ("ATDS") without the prior consent of the called party.
22 Second, they violated 47 U.S.C. § 227(c), which prohibits making automated calls to
23 individuals on the "Do Not Call Registry." *See Gulden v. Nat'l Security Exchange LLC*,
24 No. CV-17-00875-PHX-DJH, 2019 WL 13196395, at *2 (D. Ariz. May 23, 2019); *see also*
25 47 C.F.R. § 64.1200. The TCPA authorizes statutory damages of up to \$500 per violation,
26 which may be trebled in the case of knowing or willful violations. 47 U.S.C. §§ 227(b)(3)
27 & (c)(5). "Courts have held that a plaintiff can recover under both [§ 227(b) and § 227(c)]
28 even if both violations occurred in a single telephone call." *Gulden*, 2019 WL 13196395,

1 at *2. Plaintiff therefore seeks to recover treble damages of \$1,500 for each of sixteen total
2 TCPA violations—eight violations of § 227(b) and eight violations of § 227(c)—for a total
3 of \$24,000, plus \$566.13 in costs (\$402 in filing fees and \$164.13 in service fees).

4 Whether to enter a default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d
5 1089, 1092 (9th Cir. 1980). The Court may consider the following factors when deciding
6 whether default judgment is appropriate: (1) the possibility of prejudice to the plaintiff, (2)
7 the merits of the claims, (3) the sufficiency of the complaint, (4) the amount of money at
8 stake, (5) the possibility of factual disputes, (6) whether default is due to excusable neglect,
9 and (7) the policy favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d 1470,
10 1471-72 (9th Cir. 1986). In considering the merits and sufficiency of the complaint, the
11 Court accepts as true the complaint’s well-pled factual allegations. *See Geddes v. United*
12 *Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). Although the Court should consider and
13 weigh relevant factors as part of the decision-making process, it “is not required to make
14 detailed findings of fact.” *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir.
15 2002).

16 These factors favor entry of default judgment. Plaintiff’s complaint sufficiently
17 alleges sixteen violations of the TCPA, and if default judgment is not granted, Plaintiff
18 “will likely be without other recourse for recovery.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238
19 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Because Defendants are in default, there are no
20 genuine factual disputes that would preclude granting the motion. *Id.* There is no evidence
21 that Defendants’ default was the result of excusable neglect. Although cases “should be
22 decided on their merits whenever reasonably possible” *Eitel*, 782 F.2d at 1472, the
23 existence of Federal Rule of Civil Procedure 55(b) “indicates that this preference, standing
24 alone, is not dispositive.” *PepsiCo*, 238 F. Supp. 2d at 1177 (citation omitted).

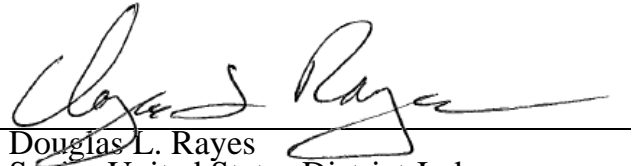
25 The Court does not find it appropriate to treble damages as to all sixteen violations,
26 however. The complaint alleges that, upon receiving the first unlawful call, Plaintiff
27 notified Defendants that he was not interested in their services, yet they continued to call
28 him. The Court finds the complaint adequately alleges that all calls received *after* the first

1 were in willful violation of the TCPA, but the first call does not warrant treble damages.

2 Accordingly,

3 **IT IS ORDERED** that Plaintiff's third motion for default judgment (Doc. 25) is
4 **GRANTED.** The Clerk of the Court is directed to enter judgment in favor of Plaintiff and
5 against Defendants, jointly and severally, in the amount of **\$22,566.13** and to terminate this
6 case.

7 Dated this 3rd day of April, 2025.

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12 Douglas L. Rayes
13 Senior United States District Judge
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